

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

MEMORANDUM AND ORDER

-against-

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S1 02 CR 535(LBS)

EMAYAEK EKANEM,

:

Defendant.

:

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On March 22, 2005, the Court of Appeals remanded this case so that this Court might consider whether to resentence Mr. Ekanem in conformity with *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). In conformity with that decision, the Court has reevaluated its sentence. Specifically, the Court has considered the guideline range and the sentencing factors set forth in 18 U.S.C. § 3553. After such consideration, the Court has determined that resentencing is not warranted and we briefly set forth our reasons for this conclusion.

Following Ekanem's plea of guilty, one day after trial commenced, this Court held a *Fatico* hearing and received extensive submissions from the parties. The Court found the guidelines range to be 18-24 months, a determination sustained by the Court of Appeals. The Court imposed the minimum guideline sentence of 18 months, stating in part:

I have to tell you that I regard what you did as being very, very serious. Misusing funds, public funds given for this purpose, for reimbursing child care providers is in my opinion a very serious crime. Were it not for a number of factors . . . I would be imposing a sentence at the top of the guidelines because I regard the crime as being such a serious abuse of discretion. But . . . I find that there are mitigating circumstances here, including the passage of time and your family situation, and I impose a sentence of 18 months, the bottom of the guidelines.

Sent. Tr. at 135.

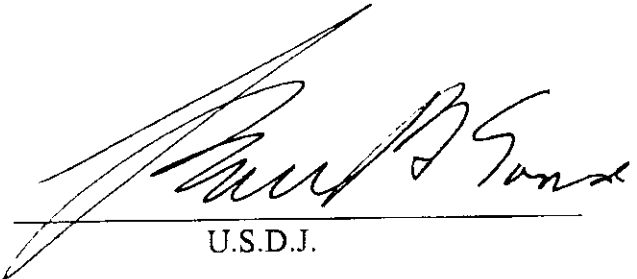
Thus, the Court explicitly noted and took into consideration the mitigating circumstances urged by defendant and his counsel.

After a fresh review of all of the circumstances surrounding this defendant and his criminal conduct , I am of the view that defendant's sentence would have been no lower had the guidelines not been mandatory or if a non-guideline sentence been imposed. This Court believes that any resentencing of Ekanem would not be in his interest.

The request for resentencing is denied.

SO ORDERED.

Dated: New York, New York
July 5, 2005



U.S.D.J.